

ORIGINAL

(14)
9-18-01
Sc

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DESMOND V. GAYLE
Plaintiff

: CV-01-1282
: (Judge Caldwell)
:
:
:
:
:
:
:

V.

WARDEN HOGAN AND DEPUTY BOWEN,
Defendants

FILED
HARRISBURG

SEP 17 2001

ANSWER AND AFFIRMATIVE DEFENSES
OF THE DEFENDANTS

MARY E. D'ANDREA, CLERK
Per 7/5
DEPUTY CLERK

AND NOW, come the Defendants, Warden Hogan and Deputy Bowen, by and through Donald L. Reihart, Esquire, Assistant Solicitor for York County, Pennsylvania and answers the Complaint of the Plaintiff as follows:

I.

Admitted

II.

Denied

On the contrary, the Plaintiff failed to file grievances and to exhaust administrative remedies available to him concerning the subject matter of his complaint.

III.

Admitted

IV.

Denied in Part

It is admitted that the Plaintiff attacked another inmate on March 12, 2001. The incident involved an exchange of obscenities initiated by Plaintiff and resulted in an altercation. Plaintiff threw Comet powder in the eyes of the other inmate and beat him with a broom handle. The attack on the inmate was sustained and resulted in the broom being broken the second time. Plaintiff admitted that he threw Comet in the other inmate's face and that he did hit him with the broom handle. As a result thereof, he received 60 days in the Behavior Adjustment Unit.

It is admitted that Plaintiff complained about food loaf, however, the physical examination of the Plaintiff did not sustain findings that corroborated his complaint and he was suspected of malingering. Plaintiff was given appropriate medical care when he requested it and there were no medical findings to indicate that he was suffering a stomach ailment from consuming food loaf.

All other allegations are denied.

WHEREFORE, Defendants request your Honorable Court to enter judgment against the Plaintiff and in favor of said Defendants, together with costs of suit and reasonable counsel fees.

AFFIRMATIVE DEFENSES

Defendants raise the following affirmative defenses to each and every claim raised in Plaintiff's Complaint.

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against the Defendants upon which relief can be granted.

SECOND DEFENSE

Plaintiff's claim is barred because he failed to exhaust remedies required by 42 U.S.C. §1997 (e).

THIRD DEFENSE

The action is frivolous and malicious and should be dismissed under 28 U.S.C. § 1915 (e).

FOURTH DEFENSE

The Defendants are immune from suit under the laws of the Commonwealth of Pennsylvania.

FIFTH DEFENSE

The Defendants are absolutely immune to Plaintiff's Complaint

SIXTH DEFENSE

The claims of the Plaintiff are barred because the actions of the Defendants were justified, privileged, and reasonable and the Defendants have qualified immunity.

SEVENTH DEFENSE

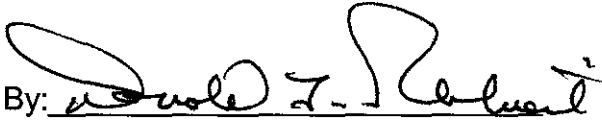
The doctrine of abstention should be applied in this case because the Plaintiff, if he has any recourse which is denied, should be pursued under the State law.

EIGHTH DEFENSE

No constitutional right of the Plaintiff was violated by any of the Defendants.

WHEREFORE, Defendants request your Honorable Court to deny Plaintiff the relief requested and to enter Judgment in favor of said Defendants and against the plaintiff, together with costs of suit and reasonable counsel fees.

Respectfully submitted,

By: 

Donald L. Reihart, Esq.
Sup. Ct. I.D. #07421
2600 Eastern Boulevard
Suite 204
York, PA 17402-2904
Telephone (717) 755-2799
Assistant County Solicitor for York
County

Dated:

CERTIFICATE OF SERVICE

I, Donald L. Reihart, Esquire, certify that a true and correct copy of the foregoing Answer and Affirmative Defenses of the Defendants was caused to be served on the date shown below by depositing same in the United States mail, first-class, postage prepaid thereon, addressed as follows:

Desmond V. Gayle
York County Prison
3400 Concord Road
York, PA 17402

Respectfully submitted,

By: 

Donald L. Reihart, Esq.
Sup. Ct. I.D. #07421
2600 Eastern Boulevard
Suite 204
York, PA 17402-2904
Telephone (717) 755-2799
Assistant Solicitor for York County

Date: _____